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Attorney for Petitioners: Xiling CHEN

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE, CALIFORNIA**

Xiling CHEN

Plaintiff,

vs.

Alberto Gonzales, Attorney General of the  
United States; Michael Chertoff, Secretary of the  
Department of Homeland Security; Emilio Gonzales)  
Director of United States Citizenship & Immigration)  
Services; Robert Meuller, Director of the Federal  
Bureau of Investigations; Gerard Heinauer,  
Director of the Nebraska Service Center

Defendants

Case No. \_\_\_\_\_

) COMPLAINT FOR MANDAMUS  
) (ADJUSTMENT OF STATUS)

The Plaintiff Xiling Chen (hereinafter "Plaintiff"), by and through her undersigned counsel,  
hereby respectfully petition this Honorable Court for a Writ of Mandamus to compel action on  
the adjustment of status application properly filed by Plaintiff Xiling Chen . The adjustment of  
status application was filed and remains within the jurisdiction of the Defendants, who have  
improperly withheld action on said application to Plaintiff's detriment. In support of this  
petition, Plaintiff alleges as follows:

**PARTIES**

1. Plaintiff is resident of Santa Clara County. Plaintiff Xiling Chen, Alien Registration Number A 97 859 574 is an adjustment of status applicant.
2. Alberto Gonzales is the U.S. Attorney General, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Naturalization Act, and is further authorized to delegate such powers and authority to subordinate agency such as Federal Bureau of Investigation and subordinate employees of the Department of Justice.
3. Michael Chertoff is the Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity.
4. Defendant Gerard Heinauer is the Director of the Nebraska Service Center, US Citizenship and Immigration Service. The Nebraska Service Center is now responsible for adjudication of the adjustment of status application filed by the Plaintiff.
5. Robert Mueller is the Director of the Federal Bureau of Investigation.
6. Emilio Gonzales is the Secretary of the United States Citizenship & Immigration Services.

**JURISDICTION**

7. This is a civil action brought pursuant to 28 USC § 1331 and 1361 to redress the deprivation or rights, privileges and immunities secured to Plaintiff, by which jurisdiction is conferred, to compel Defendants and those working under them to perform duties they owe to the Plaintiff.

1 8. Jurisdiction is also conferred by 5 USC §704. Plaintiffs are aggrieved by adverse  
2 agency action in this case, as the Administrative Procedures Act requires in order to  
3 confer jurisdiction on the District Court. 5 USC §702.

4 9. Costs and attorney fees will be sought pursuant to the Equal Access to Justice Act.  
5 5 USC §504, and 28 USC 2412(d).  
6

#### 7 **VENUE**

8 10. Venue is the Northern District of California is proper pursuant to Title 28 USC  
9 Section 1391 (e) (2) in that this is an action against officers and agencies of the  
10 United States in their official capacities, brought in the District where a substantial  
11 part of the events or omissions giving rise to Plaintiff's claim occurred.  
12

#### 13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 11. Plaintiff has exhausted her administrative remedies. Plaintiff had made numerous  
15 inquiries concerning the status of the application to no avail.  
16

#### 17 **FACTUAL ALLEGATIONS**

18 12. Plaintiff's husband Zhenru Ding has an I-140 Immigration Petition for Alien  
19 Worker filed on his behalf and the petition was approved with a priority date of  
20 December 21, 2001. See Exhibit 1. Zhenru Ding filed for adjustment of status on  
21 April 19, 2004. Plaintiff Xiling Chen also filed for adjustment of status at the same  
22 time as derivative applicant. I-485 Receipt Notices for Zhenru Ding and Plaintiff  
23 Xiling Chen and their marriage certificate are attached. See Exhibit 2.

24 13. Plaintiff Xiling Chen had her fingerprint taken first on June 29, 2004. See Exhibit 3,  
25 Copies of the Fingerprint Notification.  
26

27 14. Plaintiff Xiling Chen had her Biometrics taken again on October 28, 2005. See  
28 Exhibit 4, Copy of the ASC Appointment Notice.

- 1       15.     Plaintiff Xiling Chen had her Biometrics taken for the third time on March 21,  
2             2007. See Exhibit 5, Copy of ASC Appointment Notice.
- 3       16.     Plaintiff Xiling Chen's husband Zhenru Ding's Adjustment of Status application  
4             was approved on January 19, 2005. See Exhibit 6, Copy of Zhenru Ding's I-485  
5             Approval Notice.
- 6       17.     Plaintiff, through her attorney, sent several email inquiries and always received the  
7             same response from the US CIS stating that the case was still pending for FBI name  
8             check clearance and US CIS has no control of the time it takes. See Exhibit 7,  
9             copies of the inquiries made on May 2, 2006 and January 16, 2007.
- 10       18.     Plaintiff, through her attorney, sent another email inquiry on May 31, 2007 and  
11             received a response from the US CIS on June 13, 2007 stating that her case has been  
12             transferred to US CIS Nebraska Service Center (NSC) for processing. See Exhibit 8,  
13             copy of the inquiry made on May 31, 2007.
- 14       19.     Plaintiff Xiling Chen also sought help from United States Congresswoman Anna G.  
15             Eshoo and was notified that her case is still pending for Name Check. See Exhibit 9,  
16             letter from Congresswoman Anna Eshoo to Xiling Chen.
- 17       20.     Plaintiff Xiling Chen sent direct inquiry to the US CIS on June 16, 2005 and  
18             received a letter response from the US CIS California Service Center on July 6,  
19             2005 stating that "the case is still pending for Name Check result from the FBI".  
20             See Exhibit 10, letter from US CIS California Service Center to Xiling Chen.
- 21       21.     The Plaintiff Xiling Chen made a direct inquiry to the US CIS Ombudsman (CISO)  
22             on January 26, 2007 and received a response from the US CIS on February 27, 2007  
23             stating that the case is still pending for background check. See Exhibit 11 letter  
24             from US CIS to Xiling Chen.

- 1 22. Defendants have sufficient information to determine the Plaintiff eligibility pursuant  
2 to applicable requirements. To date, said application has not been adjudicated.
- 3 23. Defendants' refusal to act in this case is arbitrary and not in accordance with the  
4 law. Defendants willfully, and unreasonably, have delayed in and have refused to  
5 adjudicate the Plaintiff application for **three years and four months**, thereby  
6 depriving the Plaintiff of the benefit of becoming permanent resident of the United  
7 States, and the peace of mind she is entitled to.
- 9 24. Plaintiff has been damaged in that she had to apply and renew her advance parole  
10 paper year after year and pay the filing fees in order to travel abroad. See Exhibit  
11 12. Copies of Plaintiff's Authorization for Parole of an Alien into the United States.
- 13 25. Plaintiffs have also been damaged in that she has to apply and extend her H1B visa  
14 year after year and pay the filing fees in order to work legally. See Exhibit 13.  
15 Copies of Plaintiff's H1B Approval Notices.
- 16 26. Plaintiff has further been damaged by being deprived of the status of lawful  
17 permanent resident during the interminable pendency of her various applications.  
18 Plaintiff seeks to integrate fully into American life, society and culture.  
19 Naturalization as an American citizen, with the rights and privileges inherent  
20 therein, depends upon prior permanent resident status for at least 5 years. INA  
21 Section 316(a); 8 U.S.C. Section 1427(a)(1). Plaintiff is therefore being deprived of  
22 the right to accumulate the requisite time as permanent resident before she is  
23 eligible to apply for naturalization, as a direct result of Defendant's failure to timely  
24 adjudicate her application to adjust status.
- 27 27. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. Sections  
28 555(b), 701 *et seq.*, are unlawfully withholding or unreasonably delaying action on

1 Plaintiff application and have failed to carry out the adjudicative functions  
2 delegated to her by law with regard to her application.

3 **28.** Plaintiff had exhausted any administrative remedies that may exist.

4 **REQUEST FOR RELIEF:**

5 WHEREFORE, Plaintiff requests that this Court:

- 6
- 7 1. Accept jurisdiction and maintain continuing jurisdiction of this action;
- 8 2. Issue a writ in the nature of mandamus, pursuant to 28 USC § 1361 and 5 USC §
- 9 706(1) compelling Defendants and their agents to make a determination of Plaintiff
- 10 Xiling Chen's application for adjustment of status;
- 11 3. Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 28
- 12 USC § 2412.
- 13
- 14 4. Grant such other relief as this Court may deem just and proper.

15 Respectfully submitted,

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17 Attorney for Plaintiff

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Tricia Wang  
21 Attorney for Plaintiff